

**IN THE UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI**

IN THE MATTER OF:

CHAPTER 13 CASE NO.:

CECIL RAY CREEKMORE

19-10564-JDW

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE

COMES NOW Locke D. Barkley, Chapter 13 Trustee, by and through counsel, and files this Objection to Notice of Mortgage Payment Change (the "Objection") and in support states as follows:

1. The Debtor¹ initiated this proceeding with the filing of a voluntary petition for relief on February 8, 2019. The Debtor filed the Chapter 13 plan on February 22, 2019 (Dkt. #8) (the "Plan").
2. On April 15, 2019, Ditech Financial, LLC, as servicer for U.S. Bank N.A., as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee, for Mid-State Capital Corporation 2005-1 Trust ("Ditech") filed its Proof of Claim (Clm. #6) (the "Claim") in the amount of \$105,581.40 which is secured by the principal residence of the Debtor. The Claim consists of prepetition arrearage in the amount of \$23,628.57.
3. The Plan provides for the treatment of the claim of Ditech pursuant to §1322(b)(5) by curing the prepetition arrearage and maintaining the continuing monthly mortgage payment.
4. According to the Claim, the monthly mortgage payment was stated to be \$839.87, which is comprised of principal and interest of \$759.71 and monthly escrow of \$80.16.
5. According to the Claim, the prepetition arrearage in the amount of \$23,628.57 consists of the following amounts:

Principal and interest due:	\$9,876.23
Prepetition fees due:	\$12,198.52
Escrow deficiency for funds advanced:	\$1,136.26
Post-petition payments per plan:	\$839.87
Projected escrow shortage:	\$320.62
Less funds on hand:	<u>(\$742.93)</u>
Total prepetition arrearage	\$23,628.57

6. The purpose of including the escrow deficiency and projected escrow shortage in the prepetition arrearage is to bring the balance of the escrow account to a sufficient starting point so that the account balance during the upcoming twelve (12) month period, after payments into and disbursements from, will not fall below the required cushion, which is equal to two times the required monthly escrow payment.

7. On May 15, 2019, Ditech filed its Notice of Mortgage Payment Change (“NMPC”) (Dkt. #17) with a new total payment of \$874.44 effective as of June 5, 2019 (the “New Payment”).

8. The basis for the change is stated to be due to a change in the required escrow account payment. According to the NMPC, the escrow payment will increase from \$80.16 to \$114.73. The new escrow payment is comprised of the required monthly escrow of \$80.16 (which is unchanged) and an escrow shortage of \$34.57. The amount for principal and interest is also unchanged.

9. Attached to the NMPC is the Annual Escrow Account Disclosure Statement which reflects prior activity in the escrow account and a projection of activity in the account for the upcoming twelve (12) months. That information is then used to calculate the required escrow payment for the upcoming twelve (12) months, any shortage that may exist in the account, and the new monthly mortgage payment.

¹ The above-referenced Debtor or Debtors shall be referred to herein in the singular as Debtor unless specified otherwise (e.g. Debtor1 or Debtor2).

10. For the projection of activity contained in the NMPC, the beginning balance as of June 2019 (i.e. the ending balance as of May 31, 2019) is \$146.30², and the shortage amount is calculated to be negative \$414.80. All further projected calculations, including the calculation of the shortage amount, are based upon the insufficient beginning balance of \$146.30. When the shortage amount is divided by twelve (12) the result is a monthly escrow shortage payment of \$34.57, which is the amount being collected in the New Payment.

11. As noted in ¶5 above, the escrow deficiency and shortage which existed as of the petition date were included in and will be collected through payment of the prepetition arrearage. The negative beginning balance should no longer exist. The account should have been adjusted so that the escrow account was adequately funded as of the petition date.

12. The collection of the shortage in the New Payment will result in the shortage amount being collected twice. Once as part of the prepetition arrearage and again as the escrow shortage component which is part of the New Payment.

13. The Trustee alleges that, since the principal and interest payment and required escrow payment are unchanged, the NMPC is not necessary and the monthly mortgage payment should remain unchanged.

14. The Trustee requests that the NMPC be disallowed and Ditech be ordered to correct the escrow account, as necessary, to be consistent with the Claim.

WHEREFORE, PREMISES CONSIDERED, Locke D. Barkley, Chapter 13 Trustee, prays that upon notice and hearing that this Court enter its order sustaining the Trustee's Objection and for such other relief to which the Trustee and this bankruptcy estate may be entitled.

² While the beginning balance in the Annual Escrow Account Disclosure Statement is not negative, the balance is insufficient to allow for full funding of the escrow account over the upcoming twelve (12) month period.

Dated: May 30, 2019

Respectfully submitted,
LOCKE D. BARKLEY, TRUSTEE

BY: /s/ W. Jeffrey Collier
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CERTIFICATE OF SERVICE

I, the undersigned attorney for the Trustee, do hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby certify that I either mailed by United States Postal Service, first class, postage prepaid, or electronically notified through the CM/ECF system, a copy of the above and foregoing to the Debtor, attorney for the Debtor, the United States Trustee, and other parties in interest, if any, as identified below.

Ditech Financial, LLC
Post Office Box 6154
Rapid City, SD 57709-9858

Dated: May 30, 2019

/s/ W. Jeffrey Collier
W. JEFFREY COLLIER